

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to update the Commission's policies and procedures related to electromagnetic fields emanating from regulated utility facilities

FILED
PUBLIC UTILITIES COMMISSION
July 8, 2004
SAN FRANCISCO, CALIFORNIA
RULEMAKING 04-07-

ORDER INSTITUTING RULEMAKING

I. Summary

We open this rulemaking to re-examine the Commission's policies and rules related to electromagnetic fields emanating from utility facilities. The Commission's current policies and procedures in this area predate research findings recently submitted to the Commission by the California Department of Health Services as well as a decision of the California Supreme Court, SDG&E v. Covalt, 13 Cal 4th 893, (1996), concerning the extent of the Commission's jurisdiction related to electromagnetic field issues. This proceeding will reconsider the Commission's policies and procedures in light of these events and in light of the utilities' experiences in implementing existing policy.

II. Background

In 1991 the Commission opened an investigation (I.91-01-012) in response to concerns raised by members of the public and the California State Legislature related to the possible health effects of electromagnetic fields (EMFs) emanating from existing and planned utility facilities. The concerns were prompted by inconclusive international research results, some of which suggested a significant statistical relationship between EMF exposure and various illnesses and others which failed to establish a causal link between EMF exposure and disease.

In 1993, in Decision (D.) 93-11-013, the Commission found that while the evidence of direct harm from EMF was not conclusive, there was sufficient evidence that an EMF health hazard existed. (D.93-11-013 p.3.) The Commission adopted several EMF policies and programs to address the public concern and scientific uncertainty. The Commission required the utilities to undertake no-cost EMF mitigation measures and implement low-cost mitigation measures to the extent approved as part of a project's certification process. "Low-cost" was defined to be within the range of 4% of the total project cost but the Commission specified that this 4% benchmark is not an absolute cap. (D.93-11-013 p.13.) The Commission found that for a mitigation measure to be implemented, it should achieve some noticeable reduction in EMF, but declined to adopt a specific goal for EMF reduction, pending further scientific evidence. (D.93-11-013 p.15.) Workshops were held and utilities developed EMF design guidelines for new transmission facilities. The Commission also adopted several EMF measurement, education, and research programs and chose the California Department of Health Services (DHS) to manage the education and research programs. The Commission declined to establish a measurement of EMF exposure that would be harmful to public health until there was a firm scientific basis for adopting any particular standard. (D.93-11-013 p.11.)

While direct causation has not yet been proven, several studies since the last Commission decision in 1993 have found correlations that prompt additional public concern. In 2002, pursuant to I.91-01-012, DHS released its final report reviewing scientific studies on the health effects of EMF. The panel of DHS scientists found that EMF exposure can cause some degree of increased risk of childhood leukemia, adult brain cancer, Lou Gehrig's Disease, and miscarriage. The findings are controversial, and there is no consensus on their implications.

Even the three scientists of the DHS panel differed in their opinions concerning the connection of EMFs with other diseases. One scientist was “prone to believe” and two were “close to the dividing line between believing and not believing” that EMFs cause some degree of increased risk for adult leukemia. All three were undecided about the role of EMFs and the risk of suicide. All were inclined to believe that EMF exposure does not cause an increased risk of breast cancer, heart disease, Alzheimer’s Disease, or depression. They strongly believed that EMFs do not increase the risk of birth defects or lower birth weight, and that EMFs are not universal carcinogens.

Many of those concerned about EMF exposure pursued their concerns in the courts during the time the Commission was waiting for the conclusion of the DHS study. In one instance, where residents sought damages from the San Diego Gas & Electric Company (SDG&E) for EMF exposure from an existing transmission line, SDG&E took the issue of EMF jurisdiction to the California Supreme Court. That court issued a decision in SDG&E v. Covalt, 13 Cal 4th 893, (1996), ruling that by issuing D.93-11-013 and establishing interim EMF policies, the Commission has claimed exclusive jurisdiction over issues related to EMF exposure while its investigation into the health effects of EMFs continued. The Supreme Court held that, “the Commission has broad authority to determine whether the service or equipment of any public utility poses any danger to the health or safety of the public, and if so, to prescribe corrective measures and order them into effect.” (13 Cal 4th 893, 923 (1996)).

In denying relief to the plaintiffs in this case, the Supreme Court prescribed the limits of judicial authority over the issue of EMF. After considering Cal. Pub. Util. Code § 1759, which limits court review of Commission decisions to the Supreme Court; and the decision in Waters v.

Pacific Telephone Co., 14 Cal. Rptr. 753 (1974), barring an award for damages that would hinder or frustrate the Commission's regulatory policies; the Supreme Court decided that any action it took regarding EMFs would impermissibly interfere with the pending actions by the Commission on EMF. The Court found that the Commission has broad authority to determine whether the service or equipment of any public utility poses any danger to the health and safety of the public and to prescribe and order corrective measures. (13 Cal 4th 893, 924 (1996)). The Court's interpretation of the Commission's authority to require every public utility to construct, maintain and operate its facilities and equipment in a manner that safeguards the health and safety of its employees, customers, and the public, includes the Commission's duty to regulate EMFs. (13 Cal 4th 893, 923 (1996)). The Court also points to the Legislative directive (Stats. 1988, ch. 1551, §2 subd. (d)) for the Commission and DHS to investigate the health risks associated with EMF and report the results. (13 Cal 4th 893, 926 (1996)).

Similarly in Orloff v. Pacific Bell, 31 Cal. 4th 1132, (2003), the court has deferred to Commission regulatory authority. The Supreme Court ruled that when civil litigation is pending against public utilities if disclosure in the civil suit would impede an investigation being conducted by the PUC, "the district attorneys are required to await disclosure pending further action by the PUC." (31 Cal. 4th 1132, 1151 (2003)). This deference did not in itself bar civil actions generally. The court found that such actions actually complement PUC efforts since the PUC is limited to violations of the Public Utilities Code and the remedies available under that code. (31 Cal. 4th 1132, 1153 (2003)).

Public concern about EMFs and the activities utilities should undertake in response to those concerns, continues unabated. In numerous transmission

siting proceedings, for instance, such as the recent matter involving the Jefferson-Martin project (A.02-09-043) and the Mission-Miguel project (A.02-07-022) some parties expressed great concern regarding potential health effects from EMF exposure. Intervenor often contest the adequacy of a draft Environmental Impact Report that fails to consider EMFs and propose routes that reduce or eliminate new exposures in populated areas. Participants express special concerns about exposures to schools, day care centers, and residences. Intervenor also often object to the way that the utility applies the 4% rule in establishing its EMF exposure mitigation strategy. Without a common framework of guidelines which would be the result of more up-to-date EMF rules, this pattern is repeated in each proceeding, adding delay and expense to each individual application to build a new transmission project.

III. Preliminary Scoping Memo

In this Preliminary Scoping Memo, we describe the issues to be considered in this proceeding and the timetable for resolving the proceeding. Principally, this rulemaking is the forum for review of existing EMF policy and the adoption of new rules, as appropriate. Although EMF issues continue to be raised by parties in various individual transmission line proceedings, the Commission has yet to respond to the most recent DHS findings or the Supreme Court decision by clarifying the nature and limits of Commission activity in this area. In addition, the Commission has yet to examine the implications of the “no or low cost” mitigation policy that has now been in effect for more than a decade. We open this rulemaking to analyze these issues on a statewide basis.

The issues that we will explore in this docket include the following:

1. The implications, if any, of the DHS research findings, the findings of other relevant scientific studies and the merits of pursuing further focused utility-funded research.
2. The results of the Commission's current "low and no cost" mitigation policy and the need for modifications.
3. The appropriate treatment of EMF issues pursuant to CEQA and the Commission's broader environmental responsibilities.
4. Through this rulemaking the Commission intends to regulate EMF issues encompassing the issues outlined above.

IV. Category of Proceeding

The Commission's Rules of Practice and Procedure require that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing.¹ As a preliminary matter, we determine that this proceeding is quasi-legislative.

As provided in Rule 6(c)(2), any person who objects to the preliminary categorization of this rulemaking as "quasi-legislative" or to the preliminary hearing determination, shall state its objections in its PHC Statement. After the PHC in this matter, the assigned Commissioner will issue a scoping ruling making a final category determination; this final determination is subject to appeal as specified in Rule 6.4.

¹ Rule 6(c)(2).

V. Schedule

The preliminary schedule shall be determined by a ruling of the assigned commissioner. This schedule will be discussed at, and further refined following the first PHC as scheduled by the Assigned Commissioner and Administrative Law Judge.

VI. Parties and Service List

The Executive Director shall serve this order on all parties to I.91-01-012, A.02-07-022 (Mission-Miguel), A.02-09-043 (Jefferson Martin), A.03-03-043 (Mission-Viejo), A.01-03-036 (Valley Rainbow) and A.99-11-025 (Tri-Valley). At the first PHC, the Administrative Law Judge will identify parties to the proceeding, and will thereafter issue a new service list. Pacific Gas and Electric Company, Southern California Edison Company, and SDG&E are respondents. Other regulated electric companies with service in California are encouraged to participate as well.

VII. Ex Parte Communications

This quasi-legislative proceeding is subject to Pub. Util. Code § 1701.4. No restrictions on ex parte communications apply.

O R D E R

Therefore, **IT IS ORDERED** that:

1. A rulemaking is instituted to re-examine the Commission's policies and rules related to electromagnetic fields (EMFs) emanating from electric utility facilities and to evaluate what changes, if any, to the Commission's current policies and rules should be undertaken in response to the DHS study results.
2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company are respondents.

3. The Executive Director shall cause a copy of this order to be immediately served on all respondents and on the service list in I.91-01-012.

4. Individuals and organizations that have an electronic mail address shall provide that address to the Commission's Process Office at process_office@cpuc.ca.gov or (415) 703-2021, without delay. Provide the proceeding number, your name and organization, party status (i.e., appearance, state service or information only) and electronic mail address. Individuals and organizations that wish to be removed from the service list should also contact the Process Office with this request.

5. We preliminarily determine that this is a quasi-legislative proceeding and that evidentiary hearings will be required. Parties shall file and serve comments or objections on the categorization of this proceeding and need for hearings within ten days of the effective date of this decision. These comments or objections shall be served on the service list in I.91-01-012.

This order is effective today.

R._____ LYN/edf/epg

APPENDIX A

ELECTRONIC SERVICE PROTOCOLS

Party Status in Commission Proceedings

These electronic service protocols are applicable to all “appearances.” In accordance with Commission practice, by entering an appearance at a prehearing conference or by other appropriate means, an interested party or protestant gains “party” status. A party to a Commission proceeding has certain rights that non-parties (those in “state service” and “information only” service categories) do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period, and to challenge the assignment of an Administrative Law Judge (ALJ). Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents.

Service of Documents by Electronic Mail

For the purposes of this proceeding, all appearances shall serve documents by electronic mail, and in turn, shall accept service by electronic mail.

Usual Commission practice requires appearances to serve documents not only on all other appearances but also on all non-parties in the state service category of the service list. For the purposes of this proceeding, appearances shall serve the information only category as well since electronic service minimizes the financial burden that broader service might otherwise entail.

Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission’s Rules of Practice and Procedure.

Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, *et seq.*, of the Commission’s Rules of Practice and Procedure. Moreover, all filings shall be served in hard copy (as well as e-mail) on the assigned ALJ.

Electronic Service Standards

As an aid to review of documents served electronically, appearances should follow these procedures:

Merge into a single electronic file the entire document to be served (*e.g.* title page, table of contents, text, attachments, service list).

Attach the document file to an electronic note.

In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.

Within the body of the note, identify the word processing program used to create the document. (Commission experience indicates that most recipients can open readily documents sent in Microsoft Word or PDF formats)

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (paper mail shall be the default, unless another means is mutually agreed upon).

Obtaining Up-to-Date Electronic Mail Addresses

The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov. To obtain an up-to-date service list of e-mail addresses:

- Choose "Proceedings" then "Service Lists."
- Scroll through the "Index of Service Lists" to the number for this proceeding.
- To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Appearances should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

Pagination Discrepancies in Documents Served Electronically

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur.) For the purposes of reference

R._____ LYN/edf/epg

and/or citation in cross-examination and briefing, all parties should use the pagination found in the original document.

(END OF APPENDIX A)